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CLERK U.S. DISTRICT COURT DISTRICT OF ARIZONA	
BY	DEPUTY

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UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

United States of America,  
  
Plaintiff,  
  
vs.  
  
Brian Jesus Hernandez,  
  
Defendant.

CR 23-320-JAS(BGM)  
CR 22-176  
Plea Agreement

The United States of America and the defendant, Brian Jesus Hernandez, agree to the following disposition of this matter:

PLEA

a. The defendant agrees to plead guilty to Count 1 of the Indictment, charging the defendant with a violation of Title 18, United States Code, 922(A)(1)(A) and 924(a)(1)(D), Dealing Firearms Without a License. Pursuant to Fed. R. Crim. P. 11(c)(1)(A), the United States shall dismiss all remaining counts, if any, at the time of sentencing.

ELEMENTS OF THE CRIME

The essential elements of Dealing Firearms Without a License are:

a. The defendant was willfully engaged in the business of dealing in firearms within the dates specified in the indictment; and

1       b. The defendant did not then have a license as a firearms dealer.

2  
3       The government must prove beyond a reasonable doubt that the defendant engaged in a  
4       greater degree of activity than the occasional sale of a hobbyist or collector, and that the  
5       defendant devoted time, attention, and labor to selling firearms as a trade or business with  
6       the intent of making profits through the repeated purchase and sale of firearms.

7  
8                   STIPULATIONS, TERMS AND AGREEMENTS

9       The defendant understands the guilty plea is conditioned upon the following terms,  
10      stipulations, and requirements:

11                   Maximum Penalties

12      The defendant understands and agrees that the maximum penalty for the offense to  
13      which he is pleading are a fine of \$250,000, a maximum term of five (5) years  
14      imprisonment, or both, and a maximum term of three (3) years supervised release.

15      The defendant agrees to pay a fine unless the defendant establishes the applicability  
16      of the exceptions contained in § 5E1.2(e) of the Sentencing Guidelines.

17      Special Assessment: The defendant understands that in accordance with Title 18,  
18      United States Code, Section 3013, upon entry of judgment of conviction, there shall be  
19      assessed a \$100.00 special assessment for each felony count.

20                   Immigration consequences

21      The defendant recognizes that pleading guilty may have consequences with respect  
22      to his/her immigration status if the defendant is not a citizen of the United States. Under  
23      federal law, a broad range of crimes are removable offenses, including the offense(s) to  
24      which the defendant is pleading guilty. Removal and other immigration consequences are  
25      the subject of a separate proceeding, however, and the defendant understands that no one,  
26      including the defendant's attorney or the district court, can predict to a certainty the effect  
27      of the defendant's conviction on the defendant's immigration status. The defendant  
28      nevertheless affirms that he/she wants to plead guilty regardless of any immigration

consequences that this plea may entail, even if the consequence is the defendant's automatic removal from the United States.

Agreement Regarding Sentencing:

b. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the defendant stipulate and agree that the below guideline calculations are appropriate for the charge for which the defendant is pleading guilty, if the defendant is entitled to Acceptance of Responsibility:

Base Offense Level (§ 2K2.1(a)(5))	18
25 to 99 firearms (§ 2K2.1(b)(1)(C))	+6
Trafficking (§ 2K2.1(b)(5))	+4
Acceptance (§ 3E1.1)	<u>-3</u>
Total Adjusted Offense Level	25

c. Sentencing Range: Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the defendant stipulate and agree that the following are the applicable guideline ranges for the offense, based on the defendant's criminal history category (CHC):

- 57 - 60 months imprisonment if the defendant is in CH category I;
- 60 months imprisonment if the defendant is in CH category II;
- 60 months imprisonment if the defendant is in CH category III;
- 60 months imprisonment if the defendant is in CH category IV;
- 60 months imprisonment if the defendant is in CH category V;
- 60 months imprisonment if the defendant is in CH category VI.

The defendant may withdraw from the plea agreement if he/she receives a sentence that exceeds the applicable guideline range as calculated under U.S.S.G. § 1B1.1(a).

If the defendant moves for any adjustments in Chapters Two, Three, or Four of the Sentencing Guidelines or any "departures" from the Sentencing Guidelines, the government may withdraw from this agreement. If the defendant argues for a variance under 18 U.S.C. 3553(a) in support of a sentence, the government may oppose the



1 requested variance. The government, however, will not withdraw from the agreement if the  
2 defendant argues for, and the Court grants, a variance.

3 d. Acceptance of Responsibility. If the defendant makes full and complete  
4 disclosure to the U.S. Probation Office of the circumstances surrounding the defendant's  
5 commission of the offense, and if the defendant demonstrates an acceptance of  
6 responsibility for this offense up to and including the time of sentencing, the United States  
7 will recommend a two-level reduction in the applicable Sentencing Guidelines offense  
8 level pursuant to U.S.S.G. § 3E1.1(a). If the defendant has an offense level of 16 or more,  
9 the United States will move the Court for an additional one-level reduction in the  
10 applicable Sentencing Guidelines offense level pursuant to U.S.S.G. § 3E1.1(b).

11 The defendant understands and agrees that this plea agreement contains all the  
12 terms, conditions, and stipulations regarding sentencing. If the defendant requests or if the  
13 Court authorizes any reduction of sentence not specifically agreed to in writing by the  
14 parties, the government may withdraw from the plea agreement.

15 If the Court departs from the terms and conditions set forth in this plea agreement,  
16 either party may withdraw.

17 If the Court, after reviewing this plea agreement, concludes any provision is  
18 inappropriate, it may reject the plea agreement and allow the defendant an opportunity to  
19 withdraw the defendant's guilty plea, all pursuant to Rule 11(c)(5) and Rule 11(d)(2)(A),  
20 Fed. R. Crim. P.

21 The defendant understands that if the defendant violates any of the conditions of the  
22 defendant's supervised release, the supervised release may be revoked. Upon such  
23 revocation, notwithstanding any other provision of this agreement, the defendant may be  
24 required to serve an additional term of imprisonment or the defendant's sentence may  
25 otherwise be altered.  
26  
27  
28

The defendant and the government agree that this agreement does not in any manner restrict the actions of the government in any other district or bind any other United States Attorney's Office.

Disclosure of Information to U.S. Probation:

The defendant understands the government's obligation to provide all information in its file regarding the defendant to the United States Probation Office.

The defendant understands and agrees to cooperate fully with the United States Probation Office in providing:

- a. All criminal history information, i.e., all criminal convictions as defined under the Sentencing Guidelines.
- b. All financial information, i.e., present financial assets or liabilities that relate to the ability of the defendant to pay a fine or restitution.
- c. All history of drug and alcohol abuse which would warrant a treatment condition as part of sentencing.
- d. All history of mental illness or conditions which would warrant a treatment condition as part of sentencing.

AGREEMENT AS TO FORFEITURE

a. Defendant, Brian Jesus Hernandez, knowingly and voluntarily agrees to forfeit all right, title and interest in:

Line #	Asset Description	Serial Number
1	Century Arms International VSKA, .762 caliber pistol	SV7P009685
2	Pioneer Arms Corporation (Radom, Poland) Sporter .762 caliber rifle	PAC1172870
3	Romarm/Cugir Micro Draco .762 caliber pistol	PMD-17299-19RO
4	Ruger Mark II, 22 caliber pistol	272-19280



5	Unknown Manufacturer AR15 Auto Sear Machine Gun	None
6	Two (2) 3D Printed "Glock Switches" Unknown Machine Gun	Unknown
7	(36) Polymer80, INC. (P80 tactical P80) PF940C multi-caliber receivers/frames	None
8	Unknown Manufacturer Unknown Type Unknown caliber Receiver/Frame	None

b. Defendant knowingly and voluntarily agrees not to pursue any filed claims, and to waive all interest in the assets listed above, in any administrative, civil or criminal judicial proceeding, whether state or federal, which may be initiated.

c. Defendant knowingly and voluntarily agrees to consent to the entry of orders of forfeiture for the forfeitable assets and waives the requirements of Federal Rules of Criminal Procedure, Rule 32.2 regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment.

d. The defendant acknowledges that he understands that the forfeiture of assets is part of the sentence that may be imposed in this case and waives any failure by the Court to advise him of this, pursuant to Federal Rule of Criminal Procedure 11(b)(1)(J), at the time his guilty plea is accepted.

e. Defendant knowingly and voluntarily agrees to waive all constitutional, legal, and equitable defenses to all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, any jeopardy defense or claim of double jeopardy, or any other means), and knowingly and voluntarily agrees to waive any claim or defense under the Eighth Amendment to the United States Constitution, including any claim of excessive fine or punishment, to any forfeiture carried out in accordance with this plea agreement on any grounds.

f. Defendant warrants that he is the owner or has an interest in the property listed above, and knowingly and voluntarily agrees to hold the United States, its agents, and

1 employees harmless from any claims whatsoever in connection with the seizure or  
2 forfeiture of the above-listed assets covered by this agreement.

3 g. Defendant knowingly and voluntarily agrees and understands the forfeiture of  
4 the assets listed above shall not be treated as satisfaction of any assessment, fine,  
5 restitution, cost of imprisonment, or any other penalty this Court may impose upon the  
6 defendant in addition to the forfeiture.

7 h. Defendant, agrees to abandon all right, title, and interest in the \$5,998.00 in  
8 U.S. currency. Defendant acknowledges that the foregoing asset will be administratively  
9 forfeited by the Bureau of Alcohol, Tobacco, Firearms, and Explosives upon his  
10 sentencing.

11 i. Defendant agrees not to pursue any filed claims to the \$5,998.00 in U.S.  
12 currency, and to waive all interest, in any administrative forfeiture.

13 Reinstitution of Prosecution:

14 If the defendant's guilty plea is rejected, withdrawn, vacated, or reversed by any  
15 court in a later proceeding, the government will be free to prosecute the defendant for all  
16 charges as to which it has knowledge, and any charges that have been dismissed because of  
17 this plea agreement will be automatically reinstated. In such event, the defendant waives  
18 any objections, motions, or defenses based upon the Speedy Trial Act or the Sixth  
19 Amendment to the Constitution as to the delay occasioned by the later proceedings.

20 Waiver of Defenses and Appeal Rights:

21 If the defendant receives a sentence in accordance with this plea agreement, the  
22 defendant waives (1) any and all motions, defenses, probable cause determinations, and  
23 objections that the defendant could assert to the indictment or information; and (2) any  
24 right to file an appeal, any collateral attack, and any other writ or motion that challenges  
25 the conviction, an order of restitution or forfeiture, the entry of judgment against the  
26 defendant, or any aspect of the defendant's sentencing including the manner in which the  
27 sentence is determined, and any sentencing guideline determinations, including the district  
28



1 court's determination of the criminal history category. The sentence is in accordance with  
2 this agreement if the sentence imposed does not exceed **60 months confinement**. The  
3 defendant further waives: (1) any right to appeal the Court's entry of judgment against  
4 defendant; (2) any right to appeal the imposition of sentence upon defendant under Title  
5 18, United States Code, Section 3742 (sentence appeals); (3) any right to appeal the district  
6 court's refusal to grant a requested variance; (4) any right to collaterally attack defendant's  
7 conviction and sentence under Title 28, United States Code, Section 2255, or any other  
8 collateral attack; and (5) any right to file a motion for modification of sentence, including  
9 under Title 18, United States Code, Section 3582(c) (except for the right to file a  
10 compassionate release motion under 18 U.S.C. § 3582(c)(1)(A) and to appeal the denial of  
11 such a motion). The defendant acknowledges that this waiver shall result in the dismissal  
12 of any appeal or collateral attack the defendant might file challenging his/her conviction or  
13 sentence in this case. If the defendant files a notice of appeal or a habeas petition,  
14 notwithstanding this agreement, defendant agrees that this case shall, upon motion of the  
15 government, be remanded to the district court to determine whether defendant is in breach  
16 of this agreement and, if so, to permit the government to withdraw from the plea  
17 agreement. This waiver shall not be construed to bar an otherwise-preserved claim of  
18 ineffective assistance of counsel or of "prosecutorial misconduct" (as that term is defined  
19 by Section II.B of Ariz. Ethics Op. 15-01 (2015)).  
20

21 Plea Addendum

22 This written plea agreement, and any written addenda filed as attachments to this  
23 plea agreement, contain all the terms and conditions of the plea. Any additional  
24 agreements, if any such agreements exist, shall be recorded in separate documents and may  
25 be filed with the Court under seal. Accordingly, additional agreements, if any, may not be  
26 in the public record.  
27

28 ///



1  
2 WAIVER OF DEFENDANT'S RIGHTS AND FACTUAL BASIS

3 Waiver of Rights

4 I have read each of the provisions of the entire plea agreement with the assistance of  
5 counsel and understand its provisions. I have discussed the case and my constitutional and  
6 other rights with my attorney. I understand that by entering my plea of guilty I will be  
7 giving up my rights to plead not guilty, to trial by jury, to confront, cross-examine, and  
8 compel the attendance of witnesses, to present evidence in my defense, to remain silent and  
9 refuse to be a witness against myself by asserting my privilege against self-incrimination --  
10 all with the assistance of counsel -- and to be presumed innocent until proven guilty beyond  
11 a reasonable doubt.

12 I agree to enter my guilty plea as indicated above on the terms and conditions set  
13 forth in this agreement.

14 I have been advised by my attorney of the nature of the charges to which I am  
15 entering my guilty plea. I have further been advised by my attorney of the nature and range  
16 of the possible sentence.

17 My guilty plea is not the result of force, threats, assurances or promises other than  
18 the promises contained in this agreement. I agree to the provisions of this agreement as a  
19 voluntary act on my part, rather than at the direction of or because of the recommendation  
20 of any other person, and I agree to be bound according to its provisions.

21 I fully understand that, if I am granted probation or placed on supervised release by  
22 the court, the terms and conditions of such probation/supervised release are subject to  
23 modification at any time. I further understand that, if I violate any of the conditions of my  
24 probation/supervised release, my probation/supervised release may be revoked and upon  
25 such revocation, notwithstanding any other provision of this agreement, I may be required  
26 to serve an additional term of imprisonment or my sentence may otherwise be altered. I  
27  
28

1 agree that any Guidelines Range referred to herein or discussed with my attorney is not  
2 binding on the court and is merely an estimate.

3 I agree that this written plea agreement contains all the terms and conditions of my  
4 plea and that promises made by anyone (including my attorney), and specifically any  
5 predictions as to the guideline range applicable, that are not contained within this written  
6 plea agreement are without force and effect and are null and void.

7 I am satisfied that my defense attorney has represented me in a competent manner.

8 I am fully capable of understanding the terms and conditions of this plea agreement.  
9 I am not now on or under the influence of any drug, medication, liquor, or other intoxicant  
10 or depressant, which would impair my ability to fully understand the terms and conditions  
11 of this plea agreement.

12 Factual Basis

13 I agree that the following facts accurately describe my conduct in connection with  
14 the offense to which I am pleading guilty; and, that if this matter were to proceed to trial,  
15 the government could prove the elements of the offense beyond a reasonable doubt based  
16 on the following facts:

17  
18 From in or around August 2022 until February 6, 2023, Brian Jesus  
19 HERNANDEZ, used his SnapChat and Telegram social media accounts to  
20 sell or advertise for sale approximately 30 firearms.

21 On November 17, 2022, HERNANDEZ, sold a fully automatic Polymer 80,  
22 PF940C 9mm, pistol to an undercover police officer. This pistol had no  
23 serial number. The pistol was sent to ATF Firearms and Technology  
24 Division and was determined to function as a fully automatic pistol.

25 On January 4, 2023, HERNANDEZ, sold two Polymer 80 PF940C 9mm,  
26 pistols, with no serial numbers, to an undercover ATF agent. During the  
27 deal, the agent asked if HERNANDEZ could sell her another fully automatic  
28 firearm. HERNANDEZ stated he did not currently have any available and  
explained that he would have to build the firearm. HERNANDEZ agreed to  
contact the agent when he had built the firearm.

On January 27, 2023, an undercover agent contacted HERNANDEZ again in  
reference to the purchase of the firearm. HERNANDEZ explained he had a  
rifle for sale but that he wanted to make it fully automatic before he sold it.  
HERNANDEZ stated he was waiting for some parts to come in but would  
meet with the agent in February. HERNANDEZ later explained that he had

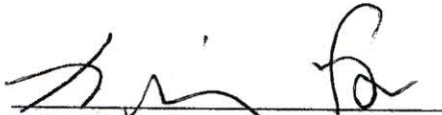


1 sold off all of his firearms to purchase a three-dimensional printer to make  
2 more firearms and to make auto sears and Glock switches.

3 On February 6, 2023, HERNANDEZ met with the undercover agent and sold  
4 a drop in auto sear. HERNANDEZ showed the undercover agent a video that  
5 showed how to use the auto sear to make a AR-15 style weapon into a  
6 machinegun. HERNANDEZ stated that he had made the auto sear with his  
7 three-dimensional printer.

8  
9 IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I  
10 AGREE, I SWEAR UNDER PENALTY OF PERJURY THAT THE FACTS  
11 IN THE "FACTUAL BASIS" PARAGRAPH ABOVE ARE TRUE.  
12

13  
14 8/18/23  
15 Date

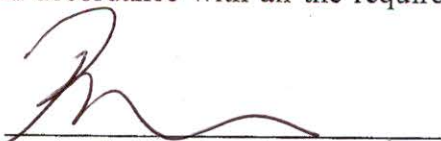
16   
17 Brian Jesus Hernandez  
18 Defendant

19 DEFENSE ATTORNEY'S APPROVAL

20 I have discussed this case and the plea agreement with my client, in detail and have  
21 advised the defendant of all matters within the scope of Fed. R. Crim. P. 11, the  
22 constitutional and other rights of an accused, the factual basis for and the nature of the  
23 offense to which the guilty plea will be entered, possible defenses, and the consequences of  
24 the guilty plea including the maximum statutory sentence possible and Defendant's waiver  
25 of her right to appeal. I have further discussed the sentencing guideline concept with the  
26 defendant. No assurances, promises, or representations have been given to me or to the  
27 defendant by the United States or by any of its representatives which are not contained in  
28 this written agreement.

I concur in the entry of the plea as indicated above and on the terms and conditions  
set forth in this agreement as in the best interests of my client. I agree to make a bona fide  
effort to ensure that the guilty plea is entered in accordance with all the requirements of  
Fed. R. Crim. P. 11.

26 8/22/23  
27 Date

28   
Benjamin Westbrook Aguilera  
Attorney for the defendant

GOVERNMENT'S APPROVAL

I have reviewed this matter and the plea agreement. I agree on behalf of the United States that the terms and conditions set forth are appropriate and are in the best interests of justice.

GARY M. RESTAINO  
United States Attorney  
District of Arizona

Digitally signed by  
CRAIG RUSSELL  
Date: 2023.04.12  
08:59:22 -07'00'

*Craig H. Russell*

Craig H. Russell  
Assistant U.S. Attorney

8/18/23  
Date